**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**SECOND APPEAL NO.398 OF 2003**

Kundlik Vishnu Bhosale ...Appellant
vs.
Tukaram Vithoba Morbale ...Respondent

Ms S.J.Patwardhan with Mr.D.N.Salvi for the Appellant

**CORAM: A.S.OKA,J.**
**DATE : MARCH 23, 2005.**

**P.C.:**

1. Heard learned Counsel for the Appellant. The Appellant is the original Defendant No.2 in a suit for perpetual injunction filed by the Respondent-Plaintiff. The finding of both the Courts below is that the Respondent-Plaintiff was in exclusive possession of the suit property. Apart from other evidence, the finding is based on revenue record which shows that the name of Respondent is appearing consistently from the year 1934. The Appellant is claiming through deceased Radhabai who was original Defendant No.1. The husband of deceased Radhabai died in the year 1932 and therefore Radhabai could not have claimed the undivided share of her husband. If Radhabai could not have claimed any right, title or interest in the suit property, the Appellant who is claiming on the basis of the Will executed by deceased Radhabai is not entitled to claim any right, title or interest. After considering the oral and documentary evidence, the Courts below have accepted the case of the Respondent that he has lawful title to the suit property and was all along in possession thereof.

2. There is no perversity in the findings recorded by the Courts below. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

**JUDGE.**